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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/584,801

06/28/2006

Andrew James Francis

06086

3427

23338 7590 05/12/2009  
DENNISON, SCHULTZ & MACDONALD  
1727 KING STREET  
SUITE 105  
ALEXANDRIA, VA 22314

EXAMINER

MA, JAMESON Q

ART UNIT

PAPER NUMBER

1797

MAIL DATE

DELIVERY MODE

05/12/2009

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/584,801	<b>Applicant(s)</b> FRANCIS, ANDREW JAMES	
	<b>Examiner</b> JAMESON Q. MA	<b>Art Unit</b> 1797	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 09 March 2009.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 31-51 is/are pending in the application.
- 4a) Of the above claim(s) 38-43, 50 and 51 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 31-37 and 44-49 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 28 June 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>20060928</u> .  | 6) <input type="checkbox"/> Other: _____                          |

**DETAILED ACTION**

***Election/Restrictions***

1. Applicant's election with traverse of group I in the reply filed on 3/9/2009 is acknowledged. The traversal is on the ground(s) that Stevens et al. does not show the use of a substantially continuous indicator band extending around a body of a container, the band being located on the body adjacent the opening. This is not found persuasive because figure 1 of Stevens shows a label portion 50 which reads on the claimed continuous indicator band.

The requirement is still deemed proper and is therefore made FINAL.

2. Claims 38-43 and 50-51 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected group, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on 3/9/2009.

***Information Disclosure Statement***

3. The information disclosure statement filed 9/28/2006 fails to comply with 37 CFR 1.98(a)(2), which requires a legible copy of each cited foreign patent document; each non-patent literature publication or that portion which caused it to be listed; and all other information or that portion which caused it to be listed. It has been placed in the application file, but the information referred to therein has not been considered.

***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

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A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 31-32, 35-37, 44-46, and 47-49 are rejected under 35 U.S.C. 102(b) as being anticipated by Stevens et al. (US 2003/0206831).

For claim 31, Stevens discloses a specimen container comprising a body (tube 20), a lid (see fig. 1), and a substantially continuous indicator band extending around the body (label 40); the band being located on the body of the container prior to a specimen being located within the body of the container.

For claim 32, Stevens discloses that the indicator band is a label applied to the body.

For claims 35-37, Stevens discloses that the indicator band includes a human or machine-readable element (see fig. 1: barcode), a removable tag (peel away portion 70), and wherein the removable tag is an adhesive tag.

For claim 44, it is noted that a recitation directed to the manner in which a claimed apparatus is intended to be used does not distinguish the claimed apparatus from the prior art, if the prior art has the capability to so perform. Additionally, Stevens discloses a container having a body with an opening, a priority indicator (label 50 is viewed as a priority indicator) on the body which is visible when a lid (see fig. 1) is in place to close the opening.

For claim 45, Stevens discloses that the priority indicator is a colored band (the label includes bar code markings, which shows that either the label background or

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markings contain color) which extends substantially around the body, adjacent the opening.

For claims 47-49, it is noted that a recitation directed to the manner in which a claimed apparatus is intended to be used does not distinguish the claimed apparatus from the prior art, if the prior art has the capability to so perform. Additionally, Stevens discloses a container having a body, a lid, and a priority indicator. Also, Stevens discloses that the priority indicator is a colored band, and is integral with a data label.

6. Claims 31-35, 44-45, and 47-49 rejected under 35 U.S.C. 102(b) as being anticipated by LabDepotInc (Plasticware) VWR (VWR SuperClear Microcentrifuge Tubes).

For claim 31-35, LabDepotInc discloses colored plastic microcentrifuge tubes such as yellow tubes (20170-295) and orange (20170-297). VWR discloses that these same tubes have both a body and lid as evidenced by the figure. Additionally, as further evidenced by the figure in VWR, the body of the container has etched markings, which are viewed as either indicator bands printed on the body or a label applied to the body.

For claims 44-45, it is noted that a recitation directed to the manner in which a claimed apparatus is intended to be used does not distinguish the claimed apparatus from the prior art, if the prior art has the capability to so perform. Additionally, LabDepotInc and VWR disclose a container having a body with an opening, a priority indicator (markings on the centrifuge tube are viewed as colored priority indicators) on the body which is visible when a lid (see figure) is in place to close the opening.

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For claims 47-49, it is noted that a recitation directed to the manner in which a claimed apparatus is intended to be used does not distinguish the claimed apparatus from the prior art, if the prior art has the capability to so perform. Additionally, LabDepotInc and VWR disclose a container having a body, a lid, and a priority indicator. Also, LabDepotInc and VWR disclose that the priority indicator is a colored band, and is integral with a data label.

### ***Conclusion***

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to JAMESON Q. MA whose telephone number is (571)270-7063. The examiner can normally be reached on M-R 8:30 AM - 7:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jill Warden can be reached on (571)272-1267. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

JM

/Jill Warden/  
Supervisory Patent Examiner, Art Unit 1797

May 6, 2009